

Honorable John H. Chun

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

STEVEN GNASSI,

Plaintiff,

v.

CARLOS DEL TORO, SECRETARY OF THE  
NAVY,

Defendant.

No. 3:20-cv-06095-JHC

PRETRIAL ORDER

Plaintiff Steven Gnassi and Defendant Carlos Del Toro, Secretary of the Navy, submit the following Proposed Pretrial Order pursuant to LCR 16(e).

**I. JURISDICTION**

The Court has original jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343(a).

**II. CLAIMS**

Plaintiff will pursue the following claim at trial:

1. Age Discrimination under the Age Discrimination in Employment Act, 29 U.S.C. § 621, *et seq.*

1 Defendant will pursue the following defenses:

2 1. All actions taken by Defendant with respect to Plaintiff were based on legitimate,  
3 nondiscriminatory reasons and were taken in a fair, reasonable, and lawful manner under the  
4 existing circumstances.

5 2. Defendant's actions were a just and proper exercise of management discretion,  
6 undertaken for fair and honest reasons in good faith under the existing circumstances.

7 3. Age was not a but-for cause or motivating factor in connection with any action or  
8 treatment taken by Defendant.

9 4. Plaintiff has no damages and has failed to mitigate his damages, if any.  
10

### 11 **III. ADMITTED FACTS**

12 The parties set forth the following as admitted facts:

13 1. Plaintiff applied for a sheet metal apprenticeship position in Shop 17 in 2019.

14 2. Plaintiff applied for an electroplater apprenticeship position in Shop 31 in 2019.

15 3. Plaintiff was over 40 years old when he applied for these positions.

16 4. For the sheet metal position in Shop 17, Kent Burton, Mark Malley, and Darrell  
17 Schneider interviewed Plaintiff.

18 5. For the electroplater position in Shop 31, Mark Candaso, Tyler Jenkins, and  
19 William Bury interviewed Plaintiff. Mr. Bury has since passed away.

20 6. Plaintiff was not selected for either position.  
21

### 22 **IV. ISSUES OF LAW**

23 Plaintiff proposes that the following issues of law will be presented at trial:

24 1. Whether to enjoin Defendant's illegal hiring practices.

25 2. Whether it is proper to draw an adverse inference from Defendant's spoliation of its  
26 hiring records.  
27

1 Defendant contends that the following issues of law will be presented at trial:

2 1. Whether Plaintiff can establish each element of a *prima facie* case of failure-to-  
3 hire because of discrimination, which are: (a) he is a member of a protected class (here, age); (b)  
4 he was qualified for the positions; (c) he was rejected for the position, despite his qualifications;  
5 and (d) the position remained open and other similarly qualified individuals who were not  
6 members of the protected class were hired.

7 2. Whether Plaintiff can establish that the legitimate, non-discriminatory reasons  
8 provided by Defendant were a pretext for discrimination.

9 Defendant objects to Plaintiff's issue of law as follows:

10 1. Whether to enjoin Defendant's allegedly illegal hiring practice is not properly  
11 before the Court. Plaintiff has not brought a pattern and practice claim, and he has stipulated that  
12 he is not bringing a disparate impact claim. Plaintiff may seek monetary relief for the issues  
13 remaining in this matter.

14  
15 **V. EXPERT WITNESSES**

16 Plaintiff will call the following expert witness to testify:

17 1. Paul Torelli, Ph.D.  
18 2600 2nd Ave, Seattle, WA 98121  
19 (206) 384-7072

20 He is expected to testify about Plaintiff's lost wages.

21 Defendant will call the following expert witness to testify:

22 1. Erick C. West, M.A.  
23 10220 N. Nevada St., Suite 110  
24 Spokane, WA 99218  
(509) 747-5850

25 Mr. West is expected to testify about Dr. Paul Torelli's expert report and testimony, and  
26 Plaintiff's alleged damages.  
27

## VI. OTHER WITNESSES

### A. Plaintiff's Lay Witnesses – Will Testify

Plaintiff will call the following lay witnesses to testify:

1. Steven Gnassi  
C/o Plaintiff's Counsel

He is expected to testify about all aspects of the facts of his claims and damages, his employment, and Navy policies and practices.

2. Defendant is expected to testify through its FRCP 30(b)(6) designees on the topics for which Defendant designated them:

- Jeff McGloin
- Carmon Hoff
- Michael Murray  
C/o Defense Counsel

3. Lisa Ames  
C/o Defense Counsel

She is expected to testify about the policies and practices of the Navy Shipyard's apprenticeship program.

4. Justin Richardson  
C/o Defense Counsel

He is expected to testify about the policies and practices of the Navy Shipyard's apprenticeship program, and the selections of the positions to which Plaintiff applied.

5. Tyler Jenkins  
C/o Defense Counsel

He is expected to testify about the policies and practices of the Navy Shipyard's apprenticeship program, and the selections of the positions to which Plaintiff applied.

6. Kent Burton  
C/o Defense Counsel

1 He is expected to testify about the policies and practices of the Navy Shipyard's  
2 apprenticeship program, and the selections of the positions to which Plaintiff applied.

3 7. Mark Candoso  
4 C/o Defense Counsel

5 He is expected to testify about the policies and practices of the Navy Shipyard's  
6 apprenticeship program, and the selections of the positions to which Plaintiff applied.

7  
8 **Plaintiff's Lay Witnesses – May Testify**

9 9. Defendant may be called to testify through its FRCP 30(b)(6) designees listed  
10 below on the topics for which Defendant designated them:

- 11 • James Jones  
12 • Randy Parks  
13 • Tim Niemi  
14 • John Galbraith  
15 • Andrew Erdman  
16 • Thomas Slater  
17 • Lisa Kruzan  
18 • Seth Frazier  
19 • Alex Hubbeling  
20 • Al Schott  
21 • Randy Parks  
22 • Scot McKee  
23 • Jana Rider  
24 C/o Defense Counsel

25 10. Mark Malley  
26 C/o Defense Counsel

27 He may be called to testify about the policies and practices of the Navy Shipyard's  
apprenticeship program, and the selections of the positions to which Plaintiff applied.

11. Darrell Schneider  
C/o Defense Counsel

He may be called to testify about the policies and practices of the Navy Shipyard's  
apprenticeship program, and the selections of the positions to which Plaintiff applied.

12. Joshua Ferguson  
C/o Defense Counsel

He may be called to testify about the policies and practices of the Navy Shipyard's apprenticeship program, and the selections of the positions to which Plaintiff applied.

13. Cristy Caldwell  
C/o Plaintiff's Counsel

She may be called to testify about the tabulation of average age and test score information.

14. Any additional lay witnesses needed to authenticate documents.

**B. Defendant's Lay Witnesses – Will Testify:**

1. Jeff McGloin

Mr. McGloin is expected to testify at least about the Puget Sound Naval Shipyard's apprenticeship program generally.

2. Lisa Ames

Ms. Ames is expected to testify at least about administrative issues in this matter, including how candidates apply for apprenticeships.

3. Justin Richardson

Mr. Richardson is expected to testify at least about the policies regarding the Shop 31 apprenticeship program, including the hiring and overtime assignment processes.

4. Mark Candaso

5. Tyler Jenkins

These witnesses are expected to testify at least about interviewing Plaintiff for the electroplater position (Shop 31) and the legitimate, non-discriminatory reasons for not hiring Plaintiff for that position, as well as general information about the position, process, etc. They may also testify about their Shop more generally and the availability and assignment of overtime within Shop 31, specifically for those working as electroplaters.

1           6.     Kent Burton

2           7.     Mark Malley

3           8.     Darrell Schneider

4           These witnesses are expected to testify at least about interviewing Plaintiff for the sheet  
5 metal mechanic position (Shop 17) and the legitimate, non-discriminatory reasons for not hiring  
6 Plaintiff for that position, as well as general information about the position, hiring process, etc.  
7 They may also testify about their Shop more generally and the availability and assignment of  
8 overtime within Shop 17, specifically for those working as sheet metal mechanics.

9           9.     Carmen Hoff

10          Ms. Hoff is expected to testify at about regarding her administrative role and interactions  
11 with the Plaintiff while he was a member of Shop 75, including his former job responsibilities,  
12 performance, abilities, and overtime history.

13           **Defendant's Lay Witnesses – May Testify**

14          10.    Joshua Ferguson

15          11.    Erin Johnson

16          12.    Cassandra Pruitt

17          These witnesses may testify regarding the Shop 17 and Shop 31 positions for which  
18 Plaintiff interviewed in general, including the salary of those positions and overtime work related  
19 to those positions, as well as other issues related to Plaintiff's claim for damages.

20          13.    Michael Murray

21          Mr. Murray may testify regarding his supervisory role over the Plaintiff, including his  
22 former and current job responsibilities, performance, abilities, and overtime history.

23          14.    Other witnesses listed in Plaintiff's pretrial statement whose testimony would be  
24 relevant to the claims or defenses in this case.

25          15.    Any other witnesses needed to authenticate documents.

**VII. PLAINTIFF'S TRIAL EXHIBITS**

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
1.	Apprentice job posting 2018 & 2019	Stipulated	Disputed	401; 403. No objection to pages 14-21.	
2.	Apprentice Job Descriptions	Stipulated	Disputed	401; 403. No objection to description for electroplater position.	
3.	PSNS & IMF Apprenticeship Participant's Agreement 2020	Stipulated	Stipulated		
4.	Collective Bargaining Agreement	Stipulated	Stipulated		
5.	Merit systems principles	Disputed	Disputed	401; 901 (no witness to authenticate)	
6.	Merit systems principles webpage	Disputed	Disputed	401; 901 (no witness to authenticate)	
7.	PSNS Press Release	Disputed	Disputed	401; 901 (no witness to authenticate)	
	Shop 31 Org chart	Stipulated	Stipulated		
8.	Gnassi Resume	Stipulated	Stipulated		
9.	"Employee Summary" for Steven Gnassi	Stipulated	Stipulated		
10.	Gnassi personnel file documents	Stipulated	Stipulated		
11.	Gnassi LinkedIn profile	Disputed	Disputed	401; 802.	



EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
12.	Certificate of eligible candidates	Stipulated	Stipulated		
13.	Qualified candidate spreadsheet with test scores (Method 1)	Stipulated	Stipulated		
14.	Ames email April 16, 2019	Stipulated	Stipulated		
15.	April 19, 2019 email from Kent Burton regarding Shop 17 candidates with attached spreadsheet	Stipulated	Disputed	401; 403.	
16.	April 19, 2019 email regarding Shop 75 interview selections and attached notes and candidate information	Stipulated	Stipulated		
17.	April 19, 2019 email regarding Shop 75 interview selections, and attached candidate spreadsheets	Stipulated	Stipulated		
18.	Email string dated April 22, 2019	Stipulated	Stipulated		
19.	Richardson email May 29, 2019	Stipulated	Stipulated		
20.	Candidate resume	Disputed	Disputed	401; 403; 602; 802; 901. Name is redacted. No objection to resumes for	

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
				individuals selected for either electroplater or sheet metal mechanic position.	
21.	Candidate resume	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
22.	Candidate resume	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
23.	Candidate resume	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
24.	Questionnaires and candidate resumes	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
25.	Shop 31 helper interview questions	Stipulated	Disputed	401; 403.	
26.	Shop 31 machinist apprenticeship questionnaire	Stipulated	Disputed	401; 403.	
27.	Candidate spreadsheet	Stipulated	Disputed	401; 403. No objection to first page. Remainder appears duplicative.	
28.	Candidate interview schedule	Stipulated	Stipulated		
29.	Interview schedule and list of questions	Stipulated	Stipulated		

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
30.	Interview questions	Stipulated	Disputed	401; 403.	
31.	Blank interview form	Stipulated	Disputed	401; 403.	
32.	Blank interview form	Stipulated	Disputed	401; 403.	
33.	Completed helper form	Stipulated	Disputed	401; 403.	
34.	Interview questions	Stipulated	Stipulated		
35.	July 23, 2019 Kent Burton email re: MIC process	Stipulated	Stipulated		
36.	List of hires by shop	Stipulated	Stipulated		
37.	Qualified and selected candidate spreadsheet	Stipulated	Stipulated		
38.	Candidate spreadsheet	Stipulated	Stipulated		
39.	J Crawford Resume	Disputed	Disputed	401; 403; 602; 902; 901. Individual not selected for either electroplater or Shop 17 sheet metal mechanic position.	
40.	I Mauvais Resume	Disputed	Disputed	401; 403; 602; 902; 901. Individual not selected for either electroplater or Shop 17 sheet metal	

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
				mechanic position.	
41.	F Hops Resume	Stipulated	Stipulated		
42.	Candidate resume (name redacted)	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
43.	Candidate resume (name redacted)	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
44.	Gnassi Resume	Stipulated	Stipulated		
45.	Candidate resume	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
46.	Candidate resume	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
47.	Candidate resume	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
48.	Candidate resume	Disputed	Disputed	(Same as 20) 401; 403; 602; 802; 901.	
49.	Apprentice hire spreadsheet	Stipulated	Disputed	401; 403.	
50.	Candidate Spreadsheet	Stipulated	Disputed	401; 403.	
51.	May 31, 2019 email regarding Shop 31 MIC process	Stipulated	Disputed	401; 403.	
52.	Qualified candidate spreadsheet with test scores (Method 2)	Stipulated	Stipulated		
53.	June 7, 2019 email from Kent	Stipulated	Stipulated		

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
	Burton regarding MIC Shop 17 process				
54.	June 11, 2019 email from Kent Burton regarding Shop 17 openings	Stipulated	Stipulated		
55.	Peter Breach email June 6, 2019	Stipulated	Stipulated		
56.	Lisa Ames email June 11, 2019	Stipulated	Stipulated		
57.	Peter Breach email June 20, 2019	Stipulated	Stipulated		
58.	Peter Breach email June 23, 2019	Stipulated	Stipulated		
59.	Lisa Ames email, July 23, 2019	Stipulated	Stipulated		
60.	Email string July 29, 2019	Stipulated	Stipulated		
61.	Peter Breach email August 6, 2019	Stipulated	Stipulated		
62.	Candidate spreadsheet with Gnassi's name	Stipulated	Stipulated		
63.	Notice to Gnassi of no hire	Stipulated	Stipulated		
64.	Gnassi "Formal Complaint of Discrimination"	Stipulated	Stipulated		
65.	Test score average spreadsheet	Stipulated	Stipulated		
66.	Test score average	Stipulated	Stipulated		

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
	spreadsheet				
67.	Test score average spreadsheet	Stipulated	Stipulated		
68.	Defendant's Responses to Plaintiff's First Interrogatories and Requests for Production	Stipulated	Stipulated		
69.	Defendant's Responses to Plaintiff's Second Interrogatories and Requests for Production	Stipulated	Stipulated		
70.	Defendant's Amended and Supplemental Responses to Plaintiff's Third Interrogatories and Requests for Production	Stipulated	Stipulated		
71.	Letter regarding FRCP 30(b)(6) depositions	Stipulated	Disputed	401; 602; 701; 802. Defendant agrees to offer stipulation or notice to the Court regarding Rule 30(b)(6) witnesses rather than substantive evidence.	
72.	Notice of FRCP 30(b)(6) deposition with topics	Stipulated	Disputed	401; 602; 701; 802. Defendant agrees to offer	

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
				stipulation or notice to the Court regarding Rule 30(b)(6) witnesses rather than substantive evidence.	
73.	“Summary of Selected Recordkeeping Obligations in 29 C.F.R. Part 1602,” from EEOC.gov/employers/summary-selected-recordkeeping-obligations-29-cfr-part-1602	Disputed	Disputed	401; 602; 701; 802; 901. Interpreting statutes and regulations belongs to the province of the Court.	
74.	29 C.F.R. § 1602.14 (Preservation of Records)	Disputed	Disputed	401; 602; 701; 802; 901. Interpreting statutes and regulations belongs to the province of the Court.	
75.	ACCUPLACER Concordance Tables	Disputed	Disputed	401; 602; 802; 901.	
76.	January 2020 Email exchange with Sharriff Thomas and Heather Cottier	Stipulated	Disputed	401; 602.	
77.	Online application form -completed	Stipulated	Stipulated		

### VIII. DEFENDANT'S TRIAL EXHIBITS

Defendant may offer the following exhibits at trial, in addition to any exhibits identified by Plaintiff:

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
500	Ames Apprentice 2019 Selections	Stipulated	Stipulated		
501	Ames Apprentice MIC Applicants (2019)	Stipulated	Stipulated		
502	Ames Apprentice CERT Qualified Applicants (2019)	Stipulated	Stipulated		
503	A Braun resume (Shop 17)	Stipulated	Stipulated		
504	T DeJesus resume (Shop 17)	Stipulated	Stipulated		
505	J Fair resume (Shop 17)	Stipulated	Stipulated		
506	N Roberts (Shop 17)	Stipulated	Stipulated		
507	S Gorton (Shop 17)	Stipulated	Stipulated		
508	J Paylor (Shop 31)	Stipulated	Stipulated		
509	S Barr resume (Shop 31)	Stipulated	Stipulated		
510	D Hendricks resume (Shop 31)	Stipulated	Stipulated		
511	Gnassi Master Pay History and Payroll files	Stipulated	Disputed	Privacy under Fed. R. Civ. P. 5.2. If SSN, DOB redacted	



EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
512	Gnassi SF-50 forms	Stipulated	Disputed	Privacy under Fed. R. Civ. P. 5.2. If SSN, DOB redacted	
513	WT and WG Pay Tables	Stipulated	Stipulated		
514	Gnassi DOL records	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
515	Gnassi résumé	Stipulated	Stipulated		
516	Gnassi résumé, second version	Stipulated	Stipulated		
517	Statement of Certification	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
518	WG 3501/05 Job Description	Stipulated	Stipulated		
519	March 2018 Surgical Report	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
				702)	
520	Gnassi Orthopedic Records	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
521	May 2018 Letter	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
522	Work capacity evaluation	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
523	Work capacity evaluation	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
524	Wage Comparison			Irrelevant (FRE 402); waste of time,	

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
				confusing (FRE 403)	
525	Injury Report	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
526	Nursing Evaluation Report	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
527	Progress Report	Stipulated	Disputed	Irrelevant (FRE 402); waste of time, confusing, prejudicial (FRE 403); hearsay (FRE 802); requires specialized knowledge (FRE 702)	
528	2019 Shop 31 Job Fair posting	Stipulated	Stipulated		
529	Questions for New Hire Interviews	Stipulated	Stipulated		
530	Gnassi application	Stipulated	Stipulated		
531	Gnassi email	Stipulated	Stipulated		
532	Burton email	Stipulated	Stipulated		

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
533	BMTC Collective Bargaining Agreement	Stipulated	Stipulated		
534	OPM Appropriated Fund Operating Manual	Stipulated	Stipulated	Yes, if proper foundation has been laid.	
535	Shop 17 Interview Guides	Stipulated	Stipulated	If the government lays a foundation that these were the questions used in the 2019 interviews	
545	Shop 17 Overtime Data	Stipulated	Disputed	Irrelevant (FRE 402)	
546	Shop 31 Interview Guides	Stipulated	Stipulated	If the government lays a foundation that these were the questions used in the 2019 interviews	
547	Shop 31 Overtime Data	Stipulated	Disputed	Irrelevant (FRE 402)	
548	Apprenticeship Wage Rates (West Summary)	Stipulated	Disputed	X Hearsay FRE 802, requires expert explanation FRE 702, to the extent intended as summary, not a mere summary of information in records, and timing of prod. is inadequate under FRE 1006.	
549	Journeyman Wage Rates (West Summary)	Stipulated	Disputed	X Hearsay FRE 802, requires expert explanation FRE 702, to the extent intended as	

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
				summary, not a mere summary of information in records, and timing of prod. is inadequate under FRE 1006.	
550	Gnassi Actual Basic Pay (West Summary)	Stipulated	Disputed	X Hearsay FRE 802, requires expert explanation FRE 702, to the extent intended as summary, not a mere summary of information in records, and timing of prod. is inadequate under FRE 1006.	
551	Gnassi Step Increases (West Summary)	Stipulated	Disputed	X Hearsay FRE 802, requires expert explanation FRE 702, to the extent intended as summary, not a mere summary of information in records, and timing of prod. is inadequate under FRE 1006.	
552	Employer Paid Retirement Benefit (West Summary)	Stipulated	Disputed	X Hearsay FRE 802, requires expert explanation FRE 702, to the extent intended as summary, not a mere summary of information in records, and timing of prod. is	

EX. NO.	Description	Authenticity	Admissibility	Objection	Admitted
				inadequate under FRE 1006.	
553	Apprentice Overtime & Shift Hours (West Summary)	Stipulated	Disputed	X Hearsay FRE 802, requires expert explanation FRE 702, to the extent intended as summary, not a mere summary of information in records, and timing of prod. is inadequate under FRE 1006.	
554	Journeyman Overtime & Shift Hours (West Summary)	Stipulated	Disputed	X Hearsay FRE 802, requires expert explanation FRE 702, to the extent intended as summary, not a mere summary of information in records, and timing of prod. is inadequate under FRE 1006.	
555	Job fair postings	Stipulated	Stipulated		
556	Ferguson email	Stipulated	Stipulated		
557	Richardson email	Stipulated	Stipulated		
558	Richardson email	Stipulated	Stipulated		
559	Shop 31 employee age data	Stipulated	Stipulated		

1 The parties reserve any right to introduce any documents exchanged during discovery,  
2 any demonstrative and illustrative exhibit, any exhibit for impeachment purposes, or any rebuttal  
3 exhibit based on how the progress of the trial, subject to the Court's allowance.

4 The parties reserve any right to make changes to this pretrial statement before the final  
5 agreed pretrial order is entered.

## 6 IX. TRIAL LOGISTICS

### 7 A. Witness Order and Protocol

#### 8 Defendant's Statement

9 The parties met and conferred regarding witness order but have not been able to reach an  
10 agreement. Other than Mr. Gnassi and his expert, Plaintiff's will-testify witnesses are Puget  
11 Sound Navy Shipyard employees, most (if not all) of whom Defendant also intends to call in its  
12 case-in-chief. Plaintiff wants to call these witnesses, subject them first to cross-examination as  
13 part of his case-in-chief, and let Defendant recall them during its case. This is inefficient for the  
14 Court and the witnesses.

15 Because this is a bench trial, and the Court is very familiar with trial procedures and  
16 evidentiary burdens, Defendant proposes that the witnesses be called in a conventional manner,  
17 as follows: it will call any Navy employee that Plaintiff wishes to have in its case-in-chief,  
18 Defendant will direct that witness, and Plaintiff will have an opportunity to cross-examine that  
19 witness (and not be limited by Defendant's direct), with any necessary reexaminations to follow.  
20 Defendant would stipulate that any such cross-examinations would be considered as part of  
21 Plaintiff's case-in-chief.

22 This would allow for a more orderly and clear presentation of the evidence for the Court.  
23 Further, it would not subject numerous fact witnesses, who live and work in Bremerton, to  
24 making multiple trips to the courthouse or waste valuable Court time.

#### 25 Plaintiff's Response

26 Defense counsel added this section to the Proposed Pretrial Order on the afternoon that it  
27 is due. This section is not provided for by Local Court Rule 16.1, so Plaintiff objects to

1 Defendant's use of this joint filing to present argument to the court about reversing the structure  
2 of the trial so that the defense gets to present its case first. Unsurprisingly, the defense has not  
3 cited any authority for its novel approach.

#### 4 **B. Trial Length**

##### 5 Defendant's Statement

6 Defendant believes the trial should take no more than five court days, with closing  
7 arguments to be heard Monday morning, October 31, or as is convenient for the Court.

##### 8 Plaintiff's Response

9 Defense counsel added this section to the Proposed Pretrial Order on the afternoon that it  
10 is due. This section is not provided for by Local Court Rule 16.1, so Plaintiff objects to use of  
11 this joint filing for this purpose. Plaintiff believes that the trial will be shorter than originally  
12 estimated because of the court's granting of partial summary judgment, but has not yet mapped  
13 out the likely length. Plaintiff will be prepared for such a discussion on this topic at the pretrial  
14 conference.

#### 15 **C. Witness Availability**

##### 16 Defendant's Statement

17 As the parties have discussed, some of the Defendant's witnesses have limited  
18 availability. As such, Defendant requests that it can call certain witnesses out of order, if  
19 necessary, including:

- 20 • that it can call Mark Candaso at the beginning of the day for whatever day he is to  
21 testify because he works a graveyard shift and will be coming from his shift to the  
22 Court;
- 23 • that it can call Mr. McGloin on either October 24 or October 25, 2022, because he  
24 has prearranged leave that starts on October 26, 2022; and
- 25 • that it can call Ms. Hoff on either October 24-26, 2022, because she has pre-  
26 scheduled professional commitments starting at 10:00 a.m. on October 27 and  
27 October 28, 2022.



Plaintiff's Response

Coordinating witness schedules is ordinarily worked out between counsel. Defense counsel added this section to the Proposed Pretrial Order on the afternoon that it is due and this section is not provided for by Local Court Rule 16.1, so Plaintiff objects to use of this joint filing for this purpose. At Defense counsel's request, Plaintiff's counsel had agreed to try to accommodate their witnesses' scheduling needs as reasonably possible, including Mr. Candaso's shift, but rather than make specific requests to Plaintiff's counsel to be worked out cooperatively, the defense raised its scheduling requests here for the first time. Plaintiff will of course attempt to accommodate government witnesses' schedules, where practical. Plaintiff's counsel will communicate directly with defense counsel about these issues after having developed their witness schedule, taking into account these witnesses' stated availability.

**D. In-person trial**

The parties agree that there are no safety or health concerns, from their perspective, with having the trial be in person. The parties will abide by whatever protocols the Court requires related to COVID-19, including wearing masks while not addressing the Court.

**ACTION BY THE COURT**

(a) This case is scheduled for trial without a jury on October 24, 2022, at 1:30 pm.

(b) Trial briefs shall be submitted to the court on or before October 17, 2022.

(c) This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 6th day of October, 2022.



United States District Judge John H. Chun

1 FORM APPROVED:

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3 Dated this 3rd day of October, 2022.

4 MacDONALD HOAGUE & BAYLESS

5  
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10 —and—

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